

Remarks

Claims 1-13 and 15-39 are currently pending in the Application and Claims 8, 17, 29 and 35-38 are herein withdrawn without prejudice from consideration by the Examiner.

Restriction

The Examiner has withdrawn Claims 35-38, added in the response dated October 6, 2006, from consideration. Applicants respectfully object to the Examiner withdrawing these claims from consideration and request that the Examiner reconsider the requirement for restriction as discussed below.

1. Although 37 CFR 1.142(a) provides that restriction is proper at any stage of prosecution up to final action, according to MPEP 811 “before making a restriction requirement after the first action on the merits, the examiner will consider whether there will be a serious burden if restriction is not required” (emphasis added).

According to the Examiner, Claims 35-38 are classified in class 372. Applicants submit that Claims 1-13 and 15-39 also pertain to class 372 as supported by the Examiner’s search notes enclosed herein. Because the pending claims are pertain to the same class there is no basis for the Examiner to assert it would be a serious burden not to require a restriction requirement. Should the Examiner disagree with the Applicant, the Examiner is respectfully requested to explicitly set forth the reasons why not issuing the current restriction would be a serious burden.

2. According to MPEP § 808.02, a restriction of distinct, but related inventions is proper only if (A) the inventions are classified separately, (B) have a separate status in the art, or (C) require different fields of search. In the present case, the (A) condition is not met because pending claims are classified in class 372. The (B) condition is not met because the Examiner has not provided an explanation indicating a recognition of separate inventive effort by inventors. See MPEP § 808.02(B). According to MPEP § 808.02 (B), “separate status in the art may be shown by citing patents which are evidence of such separate status, and also of a separate field of search.” Applicants submit that no patents were cited by the Examiner as evidence of separate status and of a separate field of

search. The (C) condition is not met because there is no showing by the Examiner that pending claims require different fields of search. Because these conditions are not met, the restriction requirement is improper and should be withdrawn.

Abstract

The Examiner objects to the Abstract for reciting “comprise.” Applicants submit that the Abstract has been amended and no longer recite the word “comprise,” as shown above, and request that the objection be withdrawn.

35 U.S.C. §112, first paragraph, rejection

Claims 1, 13, 23 and 39 stand rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. The Examiner asserts that the feature of “pulling an intrinsic frequency distribution” as recited in the claims is allegedly not found in the specification.

Applicants submit that the Examiner has **not** established a *prima facie* case of enablement requirement for the claims rejected under 35 U.S.C. §112, first paragraph. Applicants note that “when rejecting a claim under the enablement requirement of Section 112, the [Patent Office] bears an initial burden of setting forth a reasonable explanation as to why it believes that the scope of protection provided by the claim is not adequately enabled by the description of the invention provided in the specification of the application.” See *In re Wright*, 999 F.2d 1557. Applicants submit that the Examiner has not met this initial burden.

Applicants submit that the Examiner has merely concluded that the recited feature is not found in the specification without providing any basis for such a conclusion. In addition, it appears that the Examiner has overlooked, by way of an example and not of limitation, original claims as filed; p. 5, l. 20 to p 6, l.11; p. 8, ll. 21-27; and p. 10, ll.1-13 of the specification. Contrary to the Examiner’s conclusion, the feature of “pulling an intrinsic frequency distribution” as recited in the claims is supported by the specification.

Applicants submit that the claims and the specification would enable a one skilled in the art to make and/or use the invention. If the Examiner is of a different opinion, Applicants respectfully request that the Examiner present evidence or reasons “why ... [he] believes that the scope of protection provided by the claim is not adequately enabled by the description of the invention provided in the specification of the application” at least based on the portions of the specification disclosed above.

Hence, Applicants respectfully request that the 35 U.S.C. §112, first paragraph, rejection be withdrawn.

Conclusion

In view of the above, reconsideration and allowance of all the claims are respectfully solicited.

The Commissioner is authorized to charge any additional fees which may be required or credit overpayment to deposit account no. 12-0415. In particular, if this response is not timely filed, then the Commissioner is authorized to treat this response as including a petition to extend the time period pursuant to 37 CFR 1.136 (a) requesting an extension of time of the number of months necessary to make this response timely filed and the petition fee due in connection therewith may be charged to deposit account no. 12-0415.

I hereby certify that this correspondence is being deposited with the United States Post Office with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents P.O. Box 1450, Alexandria, VA 22313-1450 on

March 22, 2007
(Date of Deposit)

Stefanie Pallan
(Name of Person Signing)


(Signature)

March 22, 2007
(Date)

Respectfully submitted,



Alessandro Steinfl
Attorney for Applicants
Reg. No. 56,448
LADAS & PARRY LLP
5670 Wilshire Boulevard, Suite 2100
Los Angeles, California 90036
(323) 934-2300

Encls:
Examiner's search notes (1 p.);
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Examiner

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